

REMARKS

By the above amendment, the specification, drawings, claims and abstract have been amended to overcome the various informalities and objections noted by the Examiner.

With respect to the claims, claims 2, 7 and 8, which stand withdrawn from consideration, have been canceled without prejudice or disclaimer of the subject matter thereof and without prejudice to the right to file a divisional application directed thereto. Additionally, claims 1 and 3 have been canceled without prejudice or disclaimer of the subject matter thereof, and claims 4 - 6 have been amended to clarify features of the present invention, as will be discussed below.

With regard to the objection to the drawings and the indication that drawings include reference characters not mentioned in the description and that reference characters mentioned in the description do not appear in the drawings, by the present amendment, replacement sheets of drawings are presented herein wherein the various objections noted by the Examiner have been overcome. Accordingly, the drawings are considered to be responsive to the points raised by the Examiner and applicants request acceptance of the replacement sheets of drawings.

Additionally, the specification has been amended to correct the utilization of reference characters as noted by the Examiner, and the specification has been clarified with regard to utilization of a fixed side guide member 161 and a moving side guide member 191 in relation to a gas-lubrication type third guide, as described at page 16 of the specification, for example. Also, a new Abstract conforming to the recited features of claim 4 has been presented. Thus, applicants submit that the objections to the specification, abstract, and drawings should now be overcome.

As to the rejection of claims 1 and 3 under 35 USC 112, first paragraph, such rejection is considered to be overcome by the cancellation of claims 1 and 3 without prejudice or disclaimer of the subject matter thereof.

As to the rejection of claims 1, 3, 4 - 6, 9 and 10 under 35 USC 112, second paragraph, as being indefinite, applicants note that claims 1 and 3 have been canceled without prejudice or disclaimer of the subject matter and claims 4 - 6 have been amended in a manner which is considered to be in compliance with 35 USC 112, second paragraph, while taking into consideration, the various points raised by the Examiner.

For example, claim 4 now recites the feature of a temperature sensor, as represented, by the temperature sensor 23, as shown in Figs. 2 - 7 of the drawings, for example, which is installed near a sample-setting portion which is a part of the table on which the sample is set, noting that a sample is set on a table 21 under vacuum or reduced pressure atmosphere. Additionally, claim 4 recites the feature of a first guide and a second guide that guide the movement of the table in the X-axis direction and Y-axis direction in the plane, respectively, wherein as illustrated in the drawings and described, there is provided a X-axis guide 18 and a Y-axis guide 20, wherein a flow path of a heat exchanging medium enables cooling of the sample-setting portion via the first and second guides, as illustrated in Fig. 5, for example. Additionally, a temperature adjustor is provided that adjusts the temperature of the sample-setting portion by the heat exchanging medium, as described in the specification of this application. In accordance with the present invention, as illustrated in Fig. 6, for example, in addition to the first and second guides, there is provided a gas-lubrication type third guide that comprises two guide members 161 and 191, wherein the guide member 161 is a fixed side guide member, with the gas-

lubrication type third guide enabling guiding of the table, and at least one of the X-axis direction and the Y-axis direction in the plane of movement of the table. As illustrate din Fig. 6., the flow path of the heat-exchanging medium is provided through the inside of the fixed side guide member 161 or through the inside of a member attached to the fixed side guide member, as shown in Figs. 9 and 10, for example. Thus, applicants submit that claim 4, as amended, is clearly supported by the specification and drawings of this application.

Applicants note that claims 5 and 6 have been amended to clarify features of the present invention, wherein as illustrated in Fig. 5 and as described in the paragraph bridging pages 14 and 15 of the specification, the flow path of the heat-exchanging medium is so widely extended that the flow path is located just under the table and extends substantially over the entirety of the plane of the table movement. Furthermore, with regard to the features of claim 6, as described in the first full paragraph at page 15 of the specification, the temperature of the heat-exchanging medium 243 to 247 can be controlled independently from each other, and a plurality of temperature sensors 231 to 2310 are installed in the manner indicated. Thus, applicants submit that the features of claims 4 - 6 are supported in the specification and drawings of this application and by the present amendment, such features should be considered to be in compliance with 35 USC 112, second paragraph.

As to the rejection of claims 1, 3, 4 and 6 under 35 USC 102(b) as being anticipated by US Patent 5,959,732 to Hara et al '732; the rejection of claim 5 under 35 USC 103(a) as being unpatentable over '732 to Hara et al in view of US Patent 5,220,171 to Hara et al '171; and the rejections of claims 9 and 10 under 35 USC 103(a) as being unpatentable over '732 to Hara et al in view of Applicant's Admitted Prior Art (AAPA); such rejections are traversed insofar as they are applicable to the

present claims, and reconsideration and withdrawal of the rejections are respectfully requested.

As to the requirements to support a rejection under 35 USC 102, reference is made to the decision of In re Robertson, 49 USPQ 2d 1949 (Fed. Cir. 1999), wherein the court pointed out that anticipation under 35 U.S.C. §102 requires that each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. As noted by the court, if the prior art reference does not expressly set forth a particular element of the claim, that reference still may anticipate if the element is "inherent" in its disclosure. To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Moreover, the court pointed out that inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

As to the requirements to support a rejection under 35 USC 103, reference is made to the decision of In re Fine, 5 USPQ 2d 1596 (Fed. Cir. 1988), wherein the court pointed out that the PTO has the burden under '103 to establish a prima facie case of obviousness and can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. As noted by the court, whether a particular combination might be "obvious to try" is not a legitimate test of patentability and obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. As

further noted by the court, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

Turning to the recited features of claim 4, the only independent claim remaining in this application, applicants submit that the Examiner has mischaracterized the disclosure of Hara et al ('732) in relation to the features of claim 4. More particularly, the Examiner in applying Hara et al ('732) to the claimed invention of claim 4, contends that this patent discloses a first guide 11X and a second guide 11Y and a gas-lubrication type third guide wherein "the third guide consisting of a moving side guide member 16B and a fixed side guide member 16A. Irrespective of the Examiner's contentions, applicants submit that Hara et al ('732) in column 11, lines 19 - 34 describe that the X-stage 11X is driven in the direction X by a combination of a linear motor 12A having a stationary member 16A and a moving member 16B and a linear motor 12B having a stationary member 17A and a moving member 17B. Similarly, the Y-stage 11Y is driven by a combination of a linear motor 13A having a stationary member 18A and a moving member 18B and a linear motor 13B having a stationary member 19A and a moving member 19B. Thus, in accordance with the specific disclosure of Hara et al ('732), the first guide 11X is represented by a combination of linear motor 12A and linear motor 12B whereas the Y-stage 11Y is represented by the combination of a linear motor 13A and a linear motor 13B. As such, the first guide which guides the movement of the table in the X-axis direction necessary includes the stationary member 16A and the moving member 16B of the linear motor 12A, and it is readily apparent that such does not represent a "gas-lubrication type third guide", in addition to the first and second guides, as recited. Thus, it is readily apparent that the Examiner has

mischaracterized the disclosure of Hara et al ('732) in relation to claim 4.

Additionally, irrespective of the Examiner's contentions, the linear motor 12A having the stationary member 16A and a moving member 16B is not a gas-lubrication type third guide as recited in claim 4. Further, applicants note that while the Examiner refers to a table 11S in Hara et al ('732), on which a sample W is set, irrespective of the contentions by the Examiner, there is no disclosure or teaching in Hara et al ('732) of a temperature sensor installed near a sample-setting portion which is a part of the table on which the sample is set. Applicants note that this patent describes a temperature sensor 35 installed in the vicinity of the optical path of the laser beam 5 to measure the temperature of air in the vicinity of the optical path whereas temperature sensor 34B in Fig. 1 and temperature sensor 45B in Fig. 2 measure the temperature of fluid used for temperature control. Such temperature sensors, are not installed near a sample-setting portion which is a part of the table on which the sample is set. Thus, it is readily apparent that Hara et al ('732) fails to disclose in the sense of 35 USC 102 or teach in the sense of 35 USC 103 the recited features of claim 4 and the dependent claims thereof. Thus, applicants submit that claim 4 and the dependent claims patentably distinguish over Hara et al ('732) and should be considered allowable thereover.

Applicants further note that claim 4 recites the feature that the flow path of the heat-exchanging medium is provided through the inside of the fixed side guide member or through the inside of the member attached to the fixed side guide member, and it is apparent that Hara et al ('732) does not disclose gas-lubrication type third guide having a fixed side guide member with a flow path of the heat-exchanging medium with respect thereto. Thus, claim 4 patentably distinguishes over Hara et al ('732).

As to dependent claim 6, while Hara et al ('732) discloses a plurality of temperature sensors, it is not seen that this patent provides a second temperature sensor installed in the heat transfer path from the flow path of the heat-exchanging medium to the sample-setting table and that the temperature adjustor adjusts the temperature of the medium flowing in the multiple lines of flow path independently from each other, based on the information from the second temperature sensor and from the temperature sensor installed near the sample. Thus, claim 6 also patentably distinguishes over Hara et al '732 and should be considered allowable thereover.

As to the combination of Hara et al ('732) with Hara et al ('171), applicants note that claim 4 provides that a flow path of a heat-exchanging medium enables cooling of the sample setting portion via the first and second guide which guide the movement of the table in the X-axis direction and the Y-axis direction in a plane, respectively. While Hara et al ('171) discloses, as noted by the Examiner, flow paths of a heat-exchanging medium the form of conduits 41 - 47 extended under the moving sample-setting table 1 and mounted to the bottom of table 1, it is noted that such conduits are disposed in a cooling plate 14, which is arranged above fine-motion stage 5 and rough-motion stage 13. Thus, there is not provided a cooling of the sample-setting portion via first and second guides, as recited in the claims of this application. Accordingly, applicants submit that the combination of Hara et al ('732), having the deficiencies as pointed out above, with Hara et al ('171) does not provide the recited features of claim 4 and/or dependent claim 5 in the sense of 35 USC 103. Thus, applicants submit that the Examiner has engaged in a hindsight reconstruction attempt utilizing the principle of "obvious to try" which is not the standard of 35 USC 103. See In re Fine, supra.


With respect to the rejection of claims 9 and 10 over the combination of Hara et al ('732), in view of AAPA, as pointed out above, Hara et al ('732) fails to provide the recited features of claim 4 and also fails to provide the recited features of claims 9 and 10. With respect to AAPA, applicants submit that the Examiner has engaged in a hindsight reconstruction attempt utilizing the principle of "obvious to try" which is not proper, such that claims 9 and 10, when considered in conjunction with parent claim 4, further patentably distinguishes over the cited art in the sense of 35 USC 103 and should be considered allowable thereover.

In view of the above amendments and remarks, applicants submit the objections to the specification and drawings and abstract should now be overcome and the rejection of the claims under 35 USC 112 and over cited art should now be overcome. Thus, applicants submit that all claims present in this application should now be in condition for allowance and issuance of an action of a favorable nature is courteously solicited.

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli, Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 520.43873X00), and please credit any excess fees to such deposit account.

Respectfully submitted,

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